

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KURT FLECHSIG and DIANE FLECHSIG,

Plaintiffs,

ANSWER

-against-

TOWN OF CLARKSTOWN, CLARKSTOWN
BOARD OF ASSESSMENT REVIEW,
CLARKSTOWN TAX ASSESSOR

DOCKET NO.:
08 CIV 7000

Defendants.

-----X

Defendants, Town of Clarkstown, Clarkstown Board of Assessment Review,
Clarkstown Tax Assessor, by their attorney, Amy Mele, Esq., as and for its answer to the
Summons and Complaint herein respectfully shows to the Court and alleges:

FIRST: Answering all of the paragraphs of the complaint, defendants admit each
and every allegation contained in Paragraph "2" of the complaint.

SECOND: Deny each and every allegation contained in Paragraphs
"3,4,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20" of the complaint.

THIRD: Deny knowledge and information sufficient to form a belief as to each
and every allegation contained in paragraphs "1" and "5" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FOURTH: The Court lacks subject matter jurisdiction (28USC §1341).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTH: The Court lacks jurisdiction *in personam* over the defendant Assessor of
the Town of Clarkstown (sued herein as "Clarkstown Tax Assessor").

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SIXTH: This action is time barred by virtue of the applicable statutes of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SEVENTH: The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

EIGHTH: The complaint fails to set forth sufficient facts to constitute deprivations of any federally protected constitutional rights or other basis for a civil rights claim.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

NINTH: At all times the defendants were acting in good faith and in such capacity so as to entitle them to all relevant and available immunities, including qualified immunity, and be reason of the foregoing, the complaint must be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TENTH: At all times, the acts of the defendants were privileged as being discretionary determinations made by employees of the Town of Clarkstown while acting within the scope of their duties and are therefore immune from liability for such actions and by reason of the foregoing, the complaint must be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

ELEVENTH: The conduct of the defendants was justified and by reason of the foregoing, the complaint must be dismissed.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWELFTH: The acts of the defendants were not performed with the intent necessary to sustain the plaintiff's claims and by reason of the foregoing, the complaint must be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

THIRTEENTH: Plaintiff failed to exhaust available administrative remedies.

WHEREFORE, the defendants respectfully request judgment dismissing the complaint, and for such other and further and different relief as the Court may deem just and proper.

Dated: New City, New York
August 29, 2008

Respectfully submitted,

Amy Mele, Esq.

Town Attorney, Town of Clarkstown
Attorney for Defendants

By: 

Richard A. Glickel, Esq. (RG 8471)

Deputy Town Attorney

10 Maple Avenue

New City, NY 10956

(845)639-2060

TO:
Wayne A. Gavioli, P.C.
Attorney for Plaintiffs
101 No. Middletown Road
Nanuet, NY 10954

I, the undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certify that the within
has been compared by me with the original and found to be a true and complete copy.
☐ Attorney's Affirmation state that I am
the attorney(s) of record for
action; I have read the foregoing
the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters
I believe it to be true. The reason this verification is made by me and not by

in the within
and know the contents thereof;

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, being duly sworn, depose and say: I am

☐ Individual Verification in the action; I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except
as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

☐ Corporate Verification the of

a corporation and a party in the within action; I have read the foregoing
and know the contents thereof; and the same is true to my own knowledge,
except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This
verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ROCKLAND

ss.:

(If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at Stony Point, New York

On August 29, 2008

I served the within ANSWER

☒ Service By Mail by mailing a copy to each of the following persons at the last known address set forth after each name below.
☐ Personal Service on Individual by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served
to be the person mentioned and described in said papers as a party therein:
☐ Service by Electronic Means by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL
at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a
copy to the address set forth after each name.
☐ Overnight Delivery Service by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name
below.

Wayne A. Gavioli, P.C.
Attorney for Plaintiffs
101 No. Middletown Road
Nanuet, NY 10954

JOEL J. EPSTEIN
Notary Public, State of New York
Residing in Rockland County
No. 01EP6061858
Commission Expires July 23, 2009

Sworn to before me on August 29, 2008

Anne C. Vicari
The name signed must be printed beneath
Anne C. Vicari

NOTICE OF ENTRY

PLEASE take notice that the within is a (*certified*) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

at

M.

Dated,

Yours, etc.

Attorney for

Office and Post Office Address

To

Attorney(s) for

Doc. No. 08 CIV 7000 Year

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KURT FLECHSIG and DIANE FLECHSIG,
Plaintiffs,

-against-

TOWN OF CLARKSTOWN, CLARKSTOWN
BOARD OF ASSESSMENT REVIEW,
CLARKSTOWN TAX ASSESSOR

ANSWER

Signature (Rule 130.1.1-a)

Print name beneath
RICHARD A. GLICKEL

AMY MELE, ESQ.

Town Attorney

Attorney for Defendants

Office and Post Office Address, Telephone
Town of Clarkstown
10 Maple Avenue
New City, NY 10956
(845) 639-2060

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated

Attorney(s) for